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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,716	10/27/2003	Jeff Ciarlo	0903	1584

7590 10/08/2004
Evan D. Roberts
P.O. Box 369
Peotone, IL 60468-0369

EXAMINER

LE, TAN

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/693,716

Applicant(s)

CIARLO, JEFF

Examiner

Tan Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This is the second office action for Application No. 10/693,716. This application contains 8 claims numbered 1-8.
2. Applicant is reminded that all amendment filed on or after July 30, 2003 must comply with revised 37 CFR 1.121. Currently claims as presented are not submitted on a separate paper and the status identifier of the claims as indicated "amended" are incorrect. They should be "currently amended".

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,369,925 to Vargo.

Regarding claims 1 and 3-4, the claimed invention reads on Vargo as follows: a post protector comprising a barrier (10) having contiguous front and rear portions wherein the rear portion has two extended support portion (35, 38, Fig. 2) extending horizontally rearwardly significantly beyond the post from each side of the post; and the front portion has two vertical panels (17, 22) extending respectively forwardly from the rear portions away from the post and together forming a vertical prow-like vertex connection there between.

Regarding claim 6, Vargo also shows the barrier having oblique vertical bends between the front panel portions and respective adjacent extended side support portions (21).

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,088,229 to Jacoby et al.

Claimed invention (1-5) reads on Jacoby et al. as follows: a barrier (Fig. 2 or 5) having contiguous front and rear portions wherein the rear portion has two extended support portion extending horizontally rearwardly significantly beyond the post, the barrier also having a securing means (35a) interior thereto between two front vertical panels and the post 17 and the front portion has two vertical panels (45c, 46c) extending respectively forwardly from the rear portions away from the post and together forming a vertical prow-like vertex connection there between (47).

Regarding claim 6, Jacoby et al. also shows the barrier having oblique vertical bends (45) between the front panel portions and respective adjacent extended side support portions (21).

Regarding claims 7, Jacoby also further shows the securing means (48, 49) and between the barrier rearwardly extending portions (48, 49) and adjacent the front vertex prow-like connection.

Regarding claim 8, Jacoby et al. also shows a central beam portion at the bottom (the base plate 35 generally) being secured to the floor.

Response to Arguments

4. Applicant's arguments filed 7/19/04 have been fully considered but they are not persuasive.

Applicant has further amended independent claim 1 and other dependent claims 2-8 and pointed to alleged differences between the prior art and his invention based upon amendment introduced into claims. However, these claims still stand rejected based on Vargo and Jacoby et al.

Independent claim 1 has been further recited to include language such as the barrier rear portion has an extended support portion extending horizontally rearwardly significantly beyond the post. However, examiner respectfully asserts that both Vargo and Jacoby et al still show these limitations as pointed out in the office action. It should be noted that the recitation "significantly beyond the post" is not a positively limitation. It does not constitute a limitation in any patentable sense.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (703) 305-8244. The examiner can normally be reached on Mon-Fri from 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tan Le
September 30, 2004.



LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER